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THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

10/31/02

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

October 15, 2002

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

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APPEAL BRIEF

This Appeal Brief is submitted in connection with the above-identified application. In the February 12, 2002 Office Action issued by the United States Patent and Trademark Office, the Examiner, to whom this application is assigned, finally rejected all of Appellant's claims. A copy of the Office Action is attached hereto as **Exhibit A**.

On May 13, 2002, Appellant filed a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences (**Exhibit B**). An Appeal Brief in continuation of Appellant's Notice of Appeal was due July 13, 2002. Appellant previously submitted on July 12, 2002, the Petition for One-Month Extension of Time for Filing Appeal Brief (**Exhibit C**) and the extended deadline for the Appeal Brief was August 13, 2002. Appellant hereby requests a second and third month extension of time for filing of this Appeal Brief. The required fee for

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filing an appeal brief is ONE HUNDRED SIXTY DOLLARS (\$160.00) for a small entity. The required fee for the second and third month extensions is FOUR HUNDRED SIXTY DOLLARS (\$460.00) for a small entity. Since Appellant had already submitted FIFTY-FIVE DOLLARS (\$55.00) on July 12, 2002, the reduced fee for extension is now FOUR HUNDRED FIVE DOLLARS (\$405.00). Appellant hereby authorizes the Examiner to charge the total amount of FIVE HUNDRED SIXTY-FIVE DOLLARS (\$565.00) to Appellant's Deposit Account No. 50-1891 to cover the fees.

No fee other than the \$565.00 fee is deemed necessary in connection with the filing of this Appeal Brief. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Pursuant to MPEP § 1206, the deadline for the Appeal Brief is now October 15, 2002, because October 13, 2002, falls on Sunday and October 14, 2002, is a Federal holiday. Accordingly, this Appeal Brief is timely filed.

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I. PARTY IN INTEREST

Appellant Herbert Waddell is the only party in interest.

II. RELATED APPEALS AND INTERFERENCES

No appeals or interferences have been filed to the knowledge of Appellant or his attorney which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-15 were rejected and Appellant appeals all claims.

IV. STATUS OF AMENDMENTS

No amendment has been filed by Appellant subsequent to the February 12, 2002 Office Action rejecting all claims.

V. SUMMARY OF INVENTION

An apparatus for gathering, picking up and carrying loose materials such as dirt, leaves, debris, trash, hay, ice, snow and other materials or objects consists of two grasping elements which each have shafts with grasping devices or heads at one end, and a coupling which joins their shafts. The grasping elements can be commercially available rakes or shovels. Loose materials are gathered and picked up by placing one hand on the shaft of each grasping element and drawing the heads together. When the coupling is positioned at the end near the grasping heads, the apparatus functions in

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the manner of a post hole digger. When it is positioned near the middle or far end of the shafts, the apparatus functions in the manner of rake tongs or tweezers tongs.

VI. ISSUE PRESENTED FOR REVIEW

The issue before the Board is whether the Examiner erred in rejecting as obvious under 35 U.S.C. §103(a) claims to Appellant's new apparatus for gathering, picking up and carrying loose materials.

VII. GROUPING OF CLAIMS

Claims 1-15 are in one group and stand together.

VIII. ARGUMENTS

1. Summary of Patent Prosecution History

On October 20, 2000, Appellant filed the above-identified application with the USPTO, claiming priority of Provisional Application Number 60/160,660, filed October 21, 1999. In the August 1, 2001 Office Action, the Examiner rejected all claims 1-12 as presented in the October 20, 2000 application: claims 9-10 were rejected under 35 U.S.C. § 112 while claims 1-12 were rejected under 35 U.S.C. § 103(a). On October 23, 2001, Appellant filed the Response to August 1, 2000 Office Action that amended the Abstract and claims 9-10 and added new claims 13-15. In the February 12 Office Action in Response to the October 23, 2001 Amendment, the Examiner rejected claims 1-15 under 35 U.S.C. § 103(a).

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2. Section 103(a) Rejection: Nonobviousness

The basis for all obviousness rejections is set forth under 35 U.S.C. § 103(a) that provides:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones (6,120,073) in view of Davis (318,359). The Examiner asserts that "it would have been obvious to one having ordinary skill in the art to provide the apparatus of Jones '073 with the teachings of Davis '359 in order to provide a material gathering apparatus with a greater operational range." The Examiner also states, "Although a single piece of prior art does not disclose the invention exactly as claimed, it is believed that given the state of the art, the claimed device is very obvious and would be one of many means that one of ordinary skill in the art would solve the stated problems."

Appellant respectfully traverses and submits that this rejection is in error. As detailed below, all prior art for devices of the nature of the subject invention shows the use of rigid couplings and it would not be obvious from Jones '073, in view of Davis '359, to use a flexible coupling between the grasping elements, a novel feature of the subject invention, which could be moved to provide functional pivot points

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anywhere along the length of the shafts and would also permit rotation of the elements along the axes of their shafts.

Therefore, at most, the teachings from both Jones '073 and Davis '359 may suggest a person of ordinary skill in the art try the Appellant's claimed invention. The courts have clearly stated that a reasonable expectation of success is the legal standard for § 103 and have rejected the "obvious to try" standard. See Hybritech, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 USPQ 81, 91 (Fed. Cir. 1986); In re O'Farrell, 7 USPQ 1673, 1681 (Fed. Cir. 1988). Appellant maintains that there is no reasonable expectation of success for one of ordinary skill in the art to arrive at the subject invention from Jones '073 in view of Davis '359.

3. The Cited References

Jones '073 and Bricker '267 claim devices which couple the shafts of two grasping devices (rakes, shovels or scoops) at a pivot point about midway up the shafts. The couplings are fixed because a bolt or rod passes through the shafts to provide a common axis for rotation of the elements about the pivot point and the bolt or rod prevents rotation of the grasping devices along the axes of their shafts. The Bricker reference (not used in a rejection but included to show the general state of the art) shows two dissimilar tools joined for pivoting movement in concert with one another. Similarly, Jones '073 discloses an apparatus comprising two grasping elements which each have shafts with grasping means at one end. Thus, neither Jones nor Bricker shows the coupling means being moveable or flexible.

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In contrast, the subject invention claims a flexible coupling that permits the elements to be rotated on their axes, so that rakes, for example, can be used side-by-side to double their raking capacity.

Davis '359 claims an improved post hole digger that connects implements with a relatively moveable coupling means. The invention provides a method for moving one digging shovel temporarily out of the way of the other, but does not change their juxtaposition when used as a post hole digger. The device does not function as a post hole digger when the coupling is moved from its lowest position and only one functional pivot point is provided.

In contrast, the subject invention claims a moveable, flexible coupling that can be moved from one working configuration to another, thus changing the way that the elements work together. The flexible coupling also provides the feature of moving one opposing element out of its function position.

Reading Jones '073, in view of Davis '359, it would be obvious to use a sliding coupling as a means for getting one grasping device (scoop) out of the way of the other temporarily and then returning it to the same functional position. It would not be obvious, however, to use a sliding coupling as a means to change the working positions of the elements or to permit rotation of the grasping elements around their axes.

In the one hundred and sixteen years since Davis '359 was granted, a great number of inventors have disclosed devices employing coupled opposed shovels or rakes. Yet none of the shown or claimed couplings of rigid materials provided for

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moving the coupling to change the operating configuration of the parts. In view of Jones '073 and all the other inventions, it was unexpected that a flexible, moveable couple would have utility.

Clearly, Jones, Davis and Bricker addressed the need for improved devices to gather, pick up and carry loose materials; however, they used different ways to accomplish this than in the present invention. In fact, they teach away from it by showing that fixed couplings are required to make their devices serve their intended purpose. Whether alone or in combination, therefore, they provide no teaching, suggestion or motivation for the claimed apparatus.

Furthermore, the very long time that the devices to gather, pick up and carry loose materials have been known and improved by scores of inventions argues that no one has thought of it in all that time and the subject invention was not obvious. The Supreme Court has long established the principle that such secondary considerations as "long felt but unsolved needs [and] failure of others" may be relevant as indicia of obviousness or nonobviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966). "Thus evidence rising out of the so-called 'secondary considerations' must always when present be considered en route to a determination of obviousness." Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 1538, 218 USPQ 871, 876 (Fed. Cir. 1983) (quoting In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983)). Evidence of secondary considerations may often be the most probative and cogent evidence in the record and all pieces of evidence should be fully considered and each should be given appropriate weight. Id. 1538-1539. Thus, Appellant respectfully submits that the Examiner erred to

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exclude from consideration that no one has thought of the claimed invention despite that the devices to gather, pick up and carry loose materials have long been known and improved by scores of inventions.

Of course, Jones '073 was not granted until nearly a year after the subject application was filed, so Appellant did not have knowledge of Jones. Without conceding that the subject invention would be obvious from Jones '073, in view of Davis '359, Appellant maintains that it is clear that the subject invention could not have been obvious when the invention was conceived.

4. Section 103 Rejection: Burden of Proof

It is well established that the PTO bears the initial burden under § 103 of establishing a case of prima facie obviousness. In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (citing In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988)). "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." Id. (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)). See also, In re Wright, 848 F.2d 1216, 1219, 6 USPQ2d 1959, 1961 (Fed. Cir. 1988) (a prima facie case of obviousness requires that the prior art suggest the claimed compositions' properties and the problem the applicant attempts to solve). Thus, it is the Examiner's responsibility to show that some objective teaching or suggestion in the applied prior art, or knowledge generally available in the art would have led one of ordinary skill in the art to arrive at the claimed invention.

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When the Examiner relies on inventions other than that claimed in a patent application in showing that "some objective teaching" in the prior art would have suggested the claimed subject matter to a person of ordinary skill in the art, the Examiner is required to designate the particular part relied on as nearly as practical. 37 C.F.R. § 1.104(c) (2) provides in pertinent parts:

In rejecting claims for . . . obviousness, the examiner must cite the best references at his or her command. When a reference . . . shows or describes inventions *other than that claimed by the applicant*, the particular part relied on must be designated as nearly as practicable. *The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.* (emphasis added)

Absent some teaching or suggestions supporting the combination, obviousness 'cannot be established by combining the teachings of the prior art to produce the claimed invention.'" In re Bell, 991 F.2d at 784 (quoting In re Burckel, 592 F.2d 1175, 1179, 201 USPQ 67, 70 (CCPA 1979). While 'a reference must be considered not only for what it expressly teaches, but also for what it fairly suggests,' the Examiner must show the requisite teaching or suggestion to combine the teachings of the cited prior art reference. Id. at 785.

In the case before the Board, the Examiner admits that "a single piece of prior art does not disclose the invention exactly as claimed" and yet asserts that "it would have been obvious to one having ordinary skill in the art to provide the apparatus of Jones '073 with the teachings of Davis '359 in order to provide a material gathering apparatus."

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Neither Jones '073 and Davis '359, nor any of the references taken together, however, provide objective teaching to suggest or provide the motivation for Appellant's claimed invention. Given the number of inventions on a material gathering apparatus and the failure of the cited prior art to suggest a movable, flexible, coupling, Appellant respectfully submits that the Examiner failed to failed to satisfy his burden of proof to establish a prima facie case of obviousness.

Alternatively, Appellant further submits that the Examiner has failed to supply information and references as may be useful in judging of the propriety of continuing the prosecution of his application. 35 U.S.C. § 132(a) provides in pertinent parts:

Whenever, on examination, any claim for a patent is rejected, or any objection or requirement made, the Director shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, with or without amendment, the application shall be reexamined. (emphasis added)

In the case before the Board, for the reasons stated above, the Examiner failed to provide clear explanations of the pertinence of each reference and to specify each rejected claim.

For reasons stated above, Appellant respectfully submits that the Examiner failed to satisfy his burden of proof to establish a prima facie case of obviousness and thus the rejection of the pending claims under 35 U.S.C. § 103 cannot stand and should be withdrawn.

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IX. CONCLUSION

For the above reasons, Appellant respectfully requests that the above remarks be entered and made of record in the present application. An allowance is earnestly requested.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Appellant's undersigned attorney invites the Examiner to telephone at the number provided below.

I hereby certify that this paper is being deposited this date with the U.S. Postal Service with sufficient postage for first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Albert Wai-Kit Chan 10/15/02
Albert Wai-Kit Chan Date
Reg. No. 36,479

Respectfully submitted,

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APPENDIX



What is claimed is:

1. An apparatus for gathering, picking up and carrying materials comprising
 - a) two grasping elements which each have shafts with grasping means at one end, and
 - b) a flexible coupling means which can be moved along the shafts of the grasping elements to connect them together while permitting each of them to rotate along the axes of their shafts and to pivot with respect to each other so that the grasping heads can be brought together or moved apart from each other.
2. An apparatus as in claim 1, wherein the grasping elements have shafts with diameters of 0.5 to 3 inches.
3. An apparatus as in claim 1, wherein the grasping elements have shafts with lengths of two to six feet.
4. An apparatus as in claim 1, wherein each grasping element has a grasping head that consists of tines arrayed to form a rake.
5. An apparatus as in claim 4, wherein the grasping elements are commercially available garden rakes for raking leaves, dirt or other materials.
6. An apparatus as in claim 1, wherein each grasping element has a grasping head fabricated as the head of a shovel from sheets of metal, wood or plastic that extend along the axes of the shafts for three to eighteen inches and extend sidewise equally on both sides of the shaft for a total width of three to twenty four inches.
7. An apparatus as in claim 6, wherein the grasping elements are commercially available shovels for shoveling dirt, snow or other materials.

8. An apparatus as in claim 1, wherein the coupling means consists of two loops that have diameters slightly larger than the diameters of the shafts to be connected and said loops are connected by a flexible linkage means having a length of one fourth to 4 inches.
9. An apparatus as in claim 8, wherein the entire coupling means is molded of, or cut from, sheets of an inherently flexible material.
10. An apparatus as in claim 8, wherein the flexible linkage of the coupling means is made of rigid material fabricated in the form of a chain to impart flexibility.
11. An apparatus as in claim 8, wherein the coupling means comprises loops of material that are connected by flexible material in the form of a band.
12. An apparatus as in claim 8, wherein the loops of the coupling means contain clamping devices that permit them to be moved along the shafts to a desired position and then clamped there to prevent further unwanted movement.
13. An apparatus as in claim 8, wherein the coupling material is rubber.
14. An apparatus as in claim 8, wherein the coupling material is plastic.
15. An apparatus as in claim 8, wherein the coupling material is metal.

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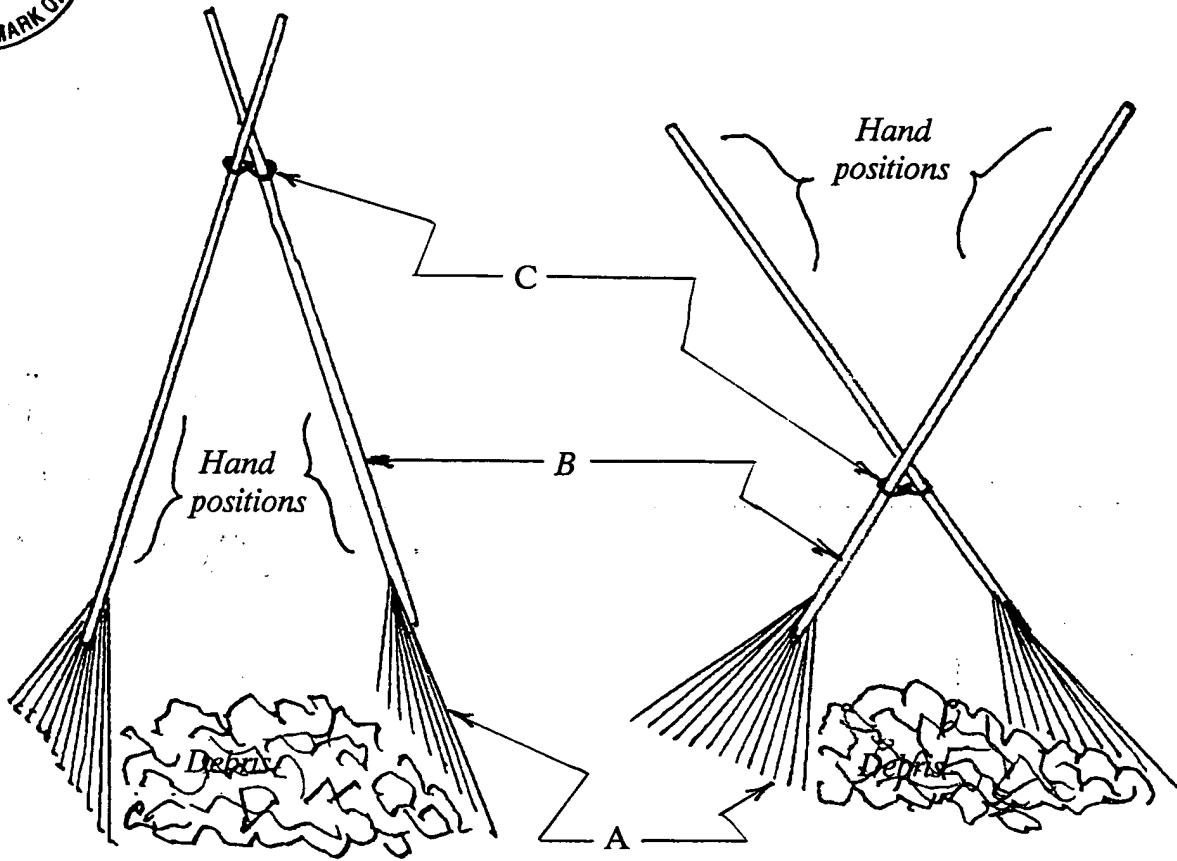


Figure 1

Figure 2

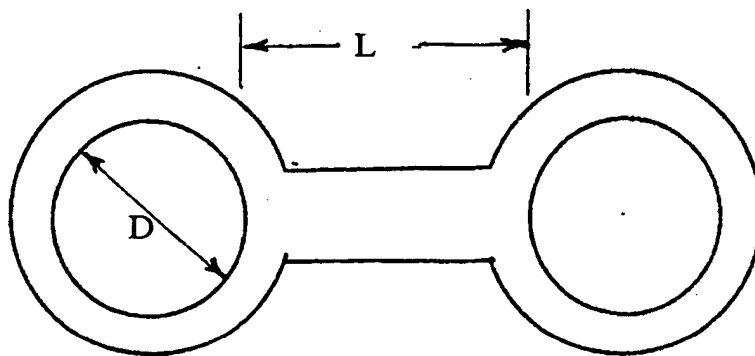


Figure 3



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,239	10/20/2000	Herbert Howell Waddell	IP-902	8560

7590 02/12/2002

Herbert Howell Waddell
98 Robbins Avenue
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EXAMINER

PEZZUTO, ROBERT ERIC

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 02/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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OTPE 30190
OCT 22 2002
PATENT & TRADEMARK OFFICE

Office Action Summary

Application No. 09/693,239	Applicant(s) Waddell
Examiner Robert E Pezzuto	Art Unit 3671

The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 23, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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OCT 30 2002

GROUP 3600

Art Unit: 3671



DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones '073 in view of Davis '359. Jones discloses an apparatus for gathering materials (figures 1-15), the apparatus comprising two grasping elements (92,94) each which have shafts (22,24) with grasping means (26,28) at one end. Further, Jones shows the shafts being of 0.5 to 3 inches in diameter and two to six feet in length (as seen in figures 1 and 5) and the grasping means having tines (as best seen in figure 1) but fails to show the coupling means being moveable or flexible. However, Davis teaches that it is well known in the art to connect to implements (figures 1-3) with a relatively moveable coupling means (figure 4). In reference to the claimed limitations of the size of the coupling means and the material from which it is made, these are an obvious matter of design and would be obvious to one having ordinary skill in the art, absent any showing to the

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contrary. Further, it would have been obvious to one having ordinary skill in the art to provide the apparatus of Jones with the teachings of Davis in order to provide a material gathering apparatus with a greater operational range.

3. In reference to applicant's arguments is the following: As the examiner understands the application for patent, it appears that the applicant's invention is the use of a flexible member to secure two single tools in opposing relationship. However, as displayed by the above references, such a device is extremely well known in this and several other arts. In addition to those mentioned above, the Bricker reference (not used in a rejection but included to show the general state of the art) shows two dissimilar tools (figure 1) jointed for pivoting movement in concert with one another. To further demonstrate the obvious of such a connection means one needs only to walk into the local Chinese restaurant where children are supplied with chopsticks that include a connection device very similar to that as claimed by the applicant to assist them in learning there use. Although a single piece of prior art does not disclose the invention exactly as claimed, it is believed that given the state of the art, the claimed device is very obvious and would be one of many means that one of ordinary skill in the art would solve the stated problems.

4. Applicant's arguments filed October 23, 2001 have been fully considered but they are not deemed to be persuasive. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P.

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R.

§ 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS FINAL ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Conclusion

5. Any inquiry concerning this communication should be directed to Robert Pezzuto at telephone number (703) 308-1012. The examiner can normally be reached Monday through Thursday from 7:00 am to 5:00 pm, Eastern Standard Time.

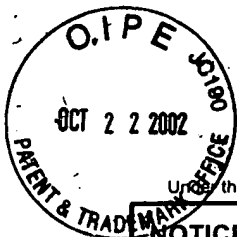
Art Unit: 3671

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 305-7687



Robert Pezzuto

February 11, 2002



**NOTICE OF APPEAL FROM THE EXAMINER TO THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

683

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Assistant Commissioner for Patents, Washington D.C. 20231" on May 13, 2002.

Signature _____

Typed or printed

name Albert Wai-Kit Chan

In re Application of

Herbert Howell Waddell

Application Number

09/693,239

Filed

October 20, 2000

For Apparatus for Gathering, Picking up and Carrying
Loose Materials

Group Art Unit

3671

Examiner

Robert Pezzuto

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 1.17(b))

\$ 160.00

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:

\$ 160.00

☒ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Commissioner has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1891. I have enclosed a duplicate copy of this sheet.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b)
is enclosed. (Form PTO/SB/96)

☐ attorney or agent of record.

☒ attorney or agent acting under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a) 36,479

Albert Wai-Kit Chan
Signature

Albert Wai-Kit Chan
Typed or printed name

May 13, 2002
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 2 forms are submitted.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : Herbert Howell Waddell
U.S. Serial No. : 09/693,239 Examiner: Robert Pezzuto
Filing Date : October 20, 2000 Group Art Unit: 3671
For : APPARATUS FOR GATHERING, PICKING UP AND
CARRYING LOOSE MATERIALS

Law Offices of Albert Wai-Kit Chan, LLC
World Plaza, Suite 604
141-07 20th Avenue
Whitestone, NY 11357

July 12, 2002

Assistant Commissioner for Patents
Washington, D.C. 20231

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GROUP 3600

Sir:

PETITION FOR ONE-MONTH EXTENSION OF TIME
FOR THE FILING OF APPEAL BRIEF

This Petition is submitted in response to Applicant's May 13, 2002 Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences (**Exhibit A**) in connection with the above-identified application. An Appeal Brief in response to Applicant's May 13, 2002 Notice of Appeal is due July 13, 2002.

Applicant hereby requests a one-month extension of time. The required fee for a one-month extension is Fifty Five Dollars (\$55.00) for a small entity. Applicant hereby authorizes the Examiner to charge this amount to Applicant's Deposit Account No. 50-1891 to cover the fee. Therefore, the deadline for the Appeal Brief is now August 13, 2002.

10/24/2002 BABRAHA1 00000137 09693239

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405.00 OP

Applicant : Herbert Howell Waddell
U.S. Serial No.: 09/693,239
Filing Date : October 20, 2000
Page : 2

If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone at the number provided below

No fee other than the \$55.00 fee is deemed necessary in connection with the filing of this Petition. However, if any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 50-1891.

Respectfully submitted,

Albert Wai-Kit Chan

Albert Wai-Kit Chan

Registration No. 36,479

Attorney for Applicant

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